

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GERRON MAURICE LINDSEY,)
)
Plaintiff,)
)
v.) Civil Action No. 04-1383-SLR
)
NURSE BRENDA,)
)
Defendant.)

O R D E R

At Wilmington this 16th day of February, 2007, having considered plaintiff's pending motion for entry of default judgment and attorney Dana Spring Monzo's request for extension of time to investigate the allegations in the complaint;

IT IS ORDERED that plaintiff's motion is granted and Monzo's request is denied, for the reasons that follow:

1. **Background.** Process was served upon Nurse Brenda on January 5, 2005. Brenda Holwerda, R.N. ("Holwerda") signed a return of waiver of service of summons on the same date. (D.I. 13) The return of waiver of service of summons signed by Holwerda states, "I understand that a judgement may be entered against me if a response is not served and filed within 60 days after December 10, 2004." Id. Holwerda did not answer or otherwise appear in the case.

2. On January 20, 2006, the court entered a show cause order requiring Nurse Brenda to respond, on or before February

21, 2006, to all outstanding discovery requests or show cause why judgment should not be entered against her. (D.I. 42) The order stated, "FAILURE TO TIMELY RESPOND TO THIS ORDER SHALL RESULT IN JUDGMENT BEING ENTERED AGAINST DEFENDANT." Id. There was no response to the order. On March 13, 2006, the court entered another order advising plaintiff that he had until April 14, 2006, to apply to the court for an entry of default in appearance against Nurse Brenda. (D.I. 44) Plaintiff was advised that "FAILURE TO TIMELY PURSUE THIS LAST AVAILABLE REMEDY WILL RESULT IN DISMISSAL OF THIS CASE." Id.

3. On March 31, 2006, plaintiff timely filed a direction to enter default judgment. (D.I. 45) He was subsequently notified that there had not been proper service upon Nurse Brenda and corrected the problem on April 11, 2006, by sending a copy of the motion to Nurse Brenda at the same address where she had been served with process. (D.I. 47)

4. Nine months later, on January 2, 2007, attorney Dana Spring Monzo, counsel for First Correctional Medical ("FCM"), asked the court for a sixty day extension of time to investigate the allegations in the complaint, to determine if Nurse Brenda was an employee of FCM, and to determine whether the allegations in the complaint occurred during a time when FCM was the healthcare provider for the Delaware Department of Correction. (D.I. 49)

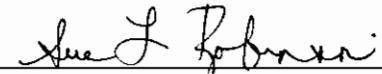
5. **Standard of Review.** "When a party against whom a judgment for affirmative relief has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." Fed. R. Civ. P. 55(a). Judgment by default may be entered as provided for in Fed. R. Civ. P. 55(b).

6. **Discussion.** It is clear from the record before the court that Nurse Brenda has "failed to plead or otherwise defend" against the complaint as provided by the Federal Rules of Civil Procedure. Nurse Brenda waived service of summons, acknowledged that she was aware a response was due and faced default if she did not respond, and repeatedly failed to respond to court orders to appear in the case despite being warned that judgment would be entered against her.

7. Attorney Monzo's request for a sixty day extension of time to investigate the allegations in the complaint is not well-taken. At this late juncture, Attorney Monzo does not even know if Nurse Brenda is her client. Moreover, the request was dilatory, having been filed nine months after plaintiff requested entry of default.

8. **Conclusion.** Accordingly, the motion for entry of default judgment (D.I. 45) is **granted**. The request for a sixty day extension of time (D.I. 49) is **denied**. The clerk of the court is directed to enter default judgment against Nurse Brenda

Holwerda pursuant to Fed. R. Civ. P. 55(b)(2). The clerk of the court is further directed to mail a copy of this order to all parties.



United States District Judge